

1 AN ACT Relating to product stewardship programs, financed and
2 provided by product producers, that include reuse or recycling of
3 unwanted products; and adding a new chapter to Title 70 RCW.

4
5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:
6

7 NEW SECTION. **Sec. 1.** SHORT TITLE. This act may be known and
8 cited as the Washington product stewardship act.
9

10 NEW SECTION. **Sec. 2.** INTENT. The legislature finds that:

11 (1) Convenient and environmentally sound product stewardship
12 programs that include collecting, transporting and recycling unwanted
13 products will help protect Washington's environment and the health of
14 state residents;

15 (2) Product producers should finance and provide these programs,
16 which are intended to encourage producers to design products that have
17 a lower carbon footprint, are less toxic and energy and material
18 intensive, and are more reusable or recyclable than other products; and

(3) It is appropriate to designate [reserved--specified in section 17] as covered products [or covered product categories] that are subject to product stewardship programs.

NEW SECTION. **Sec. 3.** DEFINITIONS. The definitions in this section apply throughout this act unless the context clearly requires otherwise.

(1) Brand means a name, symbol, word, or mark that identifies a product, rather than its components, and attributes the covered product to the owner of the brand as the producer.

(2) Covered entity means an entity, such as a resident or small business, that can use a product stewardship program to discard an unwanted product.

(3) Covered product means a product [covered by this act pursuant to section 17 of this act or] designated by the department as covered by this act pursuant to section 18 of this act, either individually or as an item within a covered product category. "Covered product" includes all materials that make up a covered product.

(4) Covered product category means a group of similar products [covered by this act pursuant to section 17 of this act or] designated by the department as covered by this act pursuant to section 18 of this act.

(5) Department means the department of ecology.

(6) Final disposition means the point beyond which no further takes place and materials from an unwanted product are either in a form capable of direct use as a feedstock in producing new products or disposed of or managed in permitted facilities.

(7) "Hazardous substances" or "hazardous materials" means those substances or materials identified under regulations and rules adopted pursuant to:

(a) The state hazardous waste management act, chapter 70.105 RCW, and

(b) The state children's safe products act, chapter 70.240 RCW.

(8) Organization means a sole proprietorship, partnership, corporation, nonprofit corporation or organization, limited liability

1 company, firm, association, cooperative, or other legal entity located
2 within or outside Washington state.

3 (9) Orphan product means a covered product that lacks a producer's
4 brand, or for which the producer is no longer in business and has no
5 successor in interest, or that bears a brand for which the department
6 cannot identify an owner.

7 (10) "Processing " means recovering materials from unwanted
8 products for use as feedstock in new products .

9 (11) Producer means a person that:

10 (a) Has legal ownership of the brand, brand-name or cobrand of a
11 covered product sold in or into Washington state;

12 (b) Imports a covered product branded by a producer that meets (a)
13 of this subsection and where that producer has no physical presence in
14 the United States; or

15 (c) If subsections a and b do not apply, a person who makes
16 an unbranded product that is sold in or into Washington state; or

17 (d) Sells at wholesale or retail a covered product, does not have
18 legal ownership of the brand, and elects to fulfill the
19 responsibilities of the producer for that product.

20 (12) Product stewardship means a requirement for a producer of a
21 covered product to manage and reduce adverse safety, health and
22 environmental impacts of the covered product throughout its life cycle

23 (13) Product stewardship plan or plan means a detailed plan
24 describing the manner in which a product stewardship program will be
25 implemented.

26 (14) Product stewardship program or program means a program
27 financed and provided by producers of covered products that addresses
28 product stewardship and includes collecting, transporting, reuse
29 processing, and final disposition of unwanted products, including a
30 fair share of orphan products.

31 (15) Recycling means transforming or remanufacturing unwanted
32 products into usable or marketable materials for use other than
33 landfill disposal or incineration. Recycling does not include energy
34 recovery or energy generation by means of combusting unwanted products
35 with or without other waste.

1 (16) Reporting period means the period commencing January 1 and
2 ending December 31 in the same calendar year.

3 (17) Residuals mean non-recyclable materials left over from
4 processing an unwanted product.

5 (18) Reuse means a change in ownership of a covered product or its
6 components and parts for use in the same manner and purpose for which
7 it was originally purchased.

8 (19) Stakeholder means a person who may have an interest in or be
9 affected by a product stewardship program.

10 (20) Stewardship organization means an organization designated by a
11 producer to act as an agent on behalf of the producer to operate a
12 product stewardship program.

13 (21) Unwanted product means a covered product no longer wanted by
14 its owner or that has been abandoned, discarded, or is intended to be
15 discarded by its owner.

16
17 NEW SECTION. **Sec. 4.** PARTICIPATION IN PRODUCT STEWARDSHIP PROGRAM
18 REQUIRED--TERMS. (1) Every producer of a covered product sold in or
19 into Washington state must participate in a product stewardship program
20 for that product. Every such producer must:

21 (a) Operate, either individually or collectively with other
22 producers, a product stewardship program approved by the department; or

23 (b) Enter into an agreement with a stewardship organization to
24 operate, on the producer's behalf, a product stewardship program
25 approved by the department.

26 (2) Product stewardship programs shall collect, free of charge,
27 unwanted products from covered entities for reuse or final disposition.

28 (3) A producer, group of producers, or stewardship organization
29 operating a product stewardship program shall:

30 (a) Comply with a product stewardship plan approved by the
31 department and this act, any rules adopted by the department to
32 implement this act, and all other applicable laws and rules; and

33 (b) Pay all administrative and operational costs associated with
34 their program.

35 (4) No product stewardship program required under this act may use
36 federal or state prison labor for processing unwanted products.

1
2 NEW SECTION. **Sec. 5.** REUSE OR RECYCLING OF UNWANTED PRODUCTS
3 REQUIRED--EXCEPTIONS. (1) Except as provided in this section, all
4 unwanted products that have been collected by a product stewardship
5 program must be reused or recycled.

6 (2) [The department shall determine whether covered products
7 specified in section 17 of this act are reusable or recyclable pursuant
8 to the procedure specified in that section.] The department shall
9 determine whether covered products designated by the department
10 pursuant to the process specified in section 18 of this act are
11 reusable or recyclable pursuant to the procedure specified in that
12 section. In either case, if the department determines that an unwanted
13 product is not reusable or recyclable, the product stewardship program
14 must include a waste reduction strategy pertaining to that product. If
15 reuse or recycling options for an unwanted product thereafter change,
16 the department will adopt rules requiring reuse or recycling of the
17 unwanted product.

18 (3) Unwanted products that cannot be reused or recycled and
19 residuals must be disposed of or managed in permitted facilities,
20 including disposal or management of hazardous substances and hazardous
21 materials in permitted hazardous waste facilities.

22
23 NEW SECTION. **Sec. 6.** RESTRICTION ON SALE OF COVERED PRODUCTS. As
24 of the [implementation date with respect to the covered products
25 specified in section 17 of this act and the] implementation date
26 established for a covered product designated pursuant to section 18 of
27 this act, no producer, wholesaler, retailer or other person may sell or
28 offer for sale that product to any person in this state unless the
29 producer is participating in a product stewardship program approved by
30 the department. A person selling or offering for sale a covered
31 product in the state shall consult the department's website for a list
32 of producers of that product participating in approved programs prior
33 to selling the product in or into the state. A person is considered to
34 have complied with this section if, on the date the person ordered a
35 covered product from a producer or its agent, the producer was listed
36 as having an approved program on the department's website.

1
2 NEW SECTION. **Sec. 7.** REQUIREMENTS OF PRODUCT STEWARDSHIP PLAN.

3 (1) A producer, group of producers, or stewardship organization
4 operating or intending to operate a product stewardship program must,
5 at least 60 days prior to submitting a product stewardship plan to the
6 department pursuant to subsection (2) of this section, provide public
7 notice of the plan it is considering for submittal. The producer, group
8 of producers, or stewardship organization must consult with
9 stakeholders during development of the plan, solicit stakeholder
10 comments, and attempt to address any stakeholder concerns regarding the
11 plan prior to submittal.

12 (2) A producer, group of producers, or stewardship organization
13 operating or intending to operate a product stewardship program must
14 submit a product stewardship plan to the department specifying:

15 (a) Information, including contact information, regarding:

16 (i) The organization submitting the plan;

17 (ii) A list of all participating producers; and

18 (iii) If the program is to be operated by a stewardship
19 organization, a description of management, administration and tasks to
20 be performed by the stewardship organization;

21 (b) Recovery goals, including:

22 (i) Recovery goals for the first, second, and third years of the
23 program, expressed as pounds per capita, and an explanation of how
24 these goals reflect a significant percentage of an unwanted product
25 relative to the quantity of the unwanted product that may be available
26 for reuse or recycling; and

27
28 **(NOTE: other performance measures to consider include: awareness (% of**
29 **population aware of the program); participation and accessibility**
30 **(participation rate, travel distance); collection (% collected, %**
31 **recycled); quality of service (target community and partner**
32 **satisfaction, number and nature of complaints); management performance**
33 **(progress against product stewardship plan goals and targets, awards**
34 **and recognition).)**
35

1 (ii) Plans to maximize recycling of packaging that may be
2 collected;

3 (c) A collection system, including:

4 (i) Location of collection sites and other collection services to
5 be used by the program;

6 (ii) How unwanted products from all covered entities will be
7 collected for all cities in the state with populations greater than
8 10,000 and in all counties of the state;

9 (iii) How the collection system will be convenient and adequate to
10 serve the needs of all covered entities in both urban and rural areas;
11 and

12 (iv) How collected unwanted products will be transported to
13 processing facilities;

14 (d) A processing and disposal system, including:

15 (i) Locations, permit status, and records of any penalties,
16 violations, or regulatory orders received in the previous five years by
17 processing and disposal facilities proposed to be used by the program;

18 (ii) A third-party audit of each processing and disposal facility
19 proposed to be used by the program for any unwanted product or
20 residuals containing hazardous substances or hazardous materials,
21 documenting compliance with all applicable laws, regulations and rules;

22 (iii) Policies and procedures to be followed by persons collecting,
23 transporting, processing and disposing unwanted products, including how
24 the program will ensure compliance with all applicable laws,
25 regulations and rules;

26 (iv) A description of how unwanted products will be processed at
27 each processing facility;

28 (v) How, if the department determines that an unwanted product is
29 not reusable or recyclable, the unwanted product will be disposed of or
30 managed in appropriate, properly permitted facilities, including
31 disposal or management of hazardous substances and hazardous materials
32 in appropriate, properly permitted hazardous waste facilities;

33 (vi) How all residuals will be disposed of or managed in
34 appropriate, properly permitted facilities, including disposal or
35 management of all hazardous substances and hazardous materials in
36 appropriate, properly permitted hazardous waste facilities;

1 (vii) How hazardous substances and hazardous materials will be
2 safely and securely tracked and handled from collection to final
3 disposition in compliance with this act, any rules adopted by the
4 department to implement this act, and all other applicable laws and
5 rules;

6 (viii) Best management practices that will be used by first
7 processors and their downstream vendors to assure that hazardous
8 substances and hazardous materials are not released into the
9 environment and will not adversely impact human health;

10 (e) How the program will seek to use businesses within the state,
11 including retailers, processing facilities, and collection and
12 transportation services. ; and

13 (f) Greenhouse gas reductions anticipated from implementing the
14 collection, transportation and recycling system;

15 (g) A financing system, including:

16 (i) How the product stewardship program will be financed, including
17 how costs will be apportioned among and assessed upon producers
18 participating in the program;

19 (ii) Where feasible, financial incentives to reward product design
20 that result in improved reuse or recycling and less toxicity; and

21 (iii) A plan to withhold a percentage of funds to be managed by the
22 product stewardship program to increase markets for recyclable
23 materials or other financial incentives to encourage market development
24 for recyclable materials contained in covered products.

25 (iv) How those providing services for the collection,
26 transportation and processing systems will be fairly compensated for
27 their services.

28 (h) Strategies to manage and reduce life-cycle impacts of products
29 and packaging, from product design to end-of-life management, including
30 ways to improve designing, packaging and distributing products to:

31 (i) Reduce waste, energy, toxicity, carbon footprints and other
32 environmental and health impacts;

33 (ii) Increase recycled content and product longevity; and

34 (iii) Make products more easily reusable or recyclable;

1 (iv) How the producers participating in the program will
2 communicate with processors used by the program to encourage
3 sustainable design of products and packaging;

4 (j) Education and outreach activities, including:

5 (i) an educational campaign promoting the use of the program to
6 covered entities that includes a toll free telephone number and website
7 and that is sufficient to meet required recovery rates.

8 (ii) a plan for working with and providing information about the
9 program to retailers, wholesalers, collectors and other interested
10 parties to disseminate to covered entities; and

11 (iii) the methodology for determining how the effectiveness of the
12 outreach activities will be measured.

13 (k) Pursuant to subsection (1) of this section, the consultation
14 process, including:

15 (i) a description of the process used to consult with stakeholders
16 during development of the plan; and

17 (ii) a summary of stakeholder comments, and how any stakeholder
18 concerns were addressed.

19 (3) The product stewardship plan shall be approved by the
20 department when all requirements have been met in compliance with this
21 act and any rules adopted by the department to implement this act.

22 (4) All plans submitted to the department must be made available to
23 the public on the department's website. Proprietary information
24 submitted to the department under this chapter is exempt from public
25 disclosure under RCW 42.56.270.

26
27 NEW SECTION. **Sec. 8.** REVIEW OF PRODUCT STEWARDSHIP PLAN. (1) A
28 producer of a covered product, a group of producers, or a stewardship
29 organization must submit a proposed product stewardship plan to the
30 department at least one year prior to a covered product's
31 implementation date.

32 (2) Within ninety days after receiving a proposed product
33 stewardship plan, the department shall determine whether the plan
34 complies with this act and any rules adopted to implement this act. If
35 it approves a plan, the department shall notify the applicant of its
36 approval. If it rejects a plan, the department shall notify the

1 applicant of its decision and its reasons for rejecting the plan. An
2 applicant whose plan has been rejected by the department may submit a
3 revised plan to the department within sixty days after receiving notice
4 of the rejection.

5 (3) At least once every four years, a producer, group of producers
6 or stewardship organization operating a product stewardship program must
7 update its product stewardship plan and submit the updated plan to the
8 department for review. The department must determine the status of an
9 updated plan within 90 days of its submittal. If the department rejects
10 an updated plan, the producer of a covered product participating in the
11 product stewardship program described in the plan will be deemed to be
12 out of compliance with this act.

13
14 NEW SECTION. **Sec. 9.** CHANGES TO PRODUCT STEWARDSHIP PLAN. (1)
15 Except as provided in subsections (2) and (3) of this section, the
16 department must grant prior approval, in writing, to any proposed change
17 to a product stewardship plan.

18 (2) Additions or changes to collection locations for unwanted
19 products may be made without the department's prior written approval.
20 The product stewardship program must inform the department of such
21 additions or changes within fifteen days of the occurrence.

22 (3) Additional producers may join a product stewardship program
23 approved by the department without the department's prior written
24 approval. The product stewardship program must inform the department of
25 such additions within fifteen days of the occurrence.

26
27 NEW SECTION. **Sec. 10.** SUSPENSION OR CANCELLATION OF APPROVAL. (1)
28 If the department determines that a product stewardship program is not
29 being operated in compliance with the requirements of this act, any
30 rules adopted by the department to implement this act, or any other
31 applicable laws, regulations, or rules, or if the department determines
32 that there is an imminent danger to the public, the department may:

33 (a) Amend its approval of the program's product stewardship plan by
34 clarifying terms or conditions to ensure full implementation of the
35 plan; or

36 (b) Suspend or cancel its approval of the plan.

(2) At least 30 days prior to amending, suspending or canceling its approval of a product stewardship plan, the department shall inform the producer, group of producers, or stewardship organization operating the product stewardship program of its intended action and provide them an opportunity to respond. The department may extend this period for good cause.

(3) Notwithstanding subsection (2) of this section, if the department determines that it is necessary to protect the public from imminent danger, it may immediately amend, suspend or cancel approval of a product stewardship program's product stewardship plan without giving the producer, group of producers, or stewardship organization operating the program an opportunity to be heard, but the department shall give the operator an opportunity to be heard through proceedings consistent with the administrative procedure act, chapter 34.05 RCW, within fifteen days after the date on which the department takes any of those actions.

NEW SECTION. **Sec. 11. REPORTING.** (1) On or before June 30 of each year, every producer, group or producers, or stewardship organization operating a product stewardship program must prepare and submit to the department an annual report describing the program's activities during the previous reporting period, specifying:

(a) Information, including contact information, regarding:

- (i) the organization submitting the report; and
- (ii) a list of all participating producers;

(b) Recovery rates, including:

(i) the amount, by weight, of unwanted products collected from covered entities in each county in the state, including documented collection and reuse, recycling or disposal of that material;

(ii) how the program attained recovery rates established in the product stewardship plan or set by the department, and, if the program did not attain those recovery rates, what actions it will take during the next reporting period to do so, including how it will increase and improve effective, measurable outreach and education efforts;

(c) The collection system, including collection locations and services provided for all cities in the state with populations greater than 10,000 and in all counties in the state;

1 (d) The processing and disposal system, including:

2 (i) a list of processing and disposal facilities used and locations,
3 the weight of unwanted products processed at each processing facility
4 and disposed at each disposal facility, and a description of the methods
5 used at each processing facility;

6 (ii) a list of subcontractors used through final disposition that
7 processed or disposed of unwanted products containing hazardous
8 substances or hazardous materials, and subcontractor facility locations;

9 (iii) documentation and summary results of annual third-party audits
10 conducted on each processing facility and disposal facility as required
11 in section 7 of this act;

12 (iv) if an unwanted product is exempted from the reuse or recycling
13 requirement in section 5 of this act, how the unwanted product was
14 disposed of or managed in appropriate, properly permitted facilities,
15 including disposal or management of hazardous substances or hazardous
16 materials in appropriate, properly permitted hazardous waste facilities;

17 (v) final disposition of residuals;

18 (vi) any penalties, violations, or regulatory orders received during
19 the reporting period by each processing facility or disposal facility
20 that was used;

21 (vii) whether policies and procedures in the product stewardship
22 plan for collecting, transporting, processing and final disposition of
23 unwanted products were followed during the reporting period, and a
24 description of any noncompliance;

25 (e) The financing system, including a description of how the system
26 met the requirements in section 7 of this act;

27 (f) The education and outreach activities implemented during the
28 reporting period, including the effectiveness of the education and
29 outreach activities;

30 (g) Results of any actions taken to manage and reduce life cycle
31 impacts of products and package, as described in subsection (2)(f) of
32 section 7 of this act;

33 (h) How the product stewardship program complied with any other
34 elements in the plan approved by the department; and

35 (i) Any other information that the department may reasonably
36 require.

1 (2) A producer, group of producers, or stewardship organization
2 operating a product stewardship program meeting the following conditions
3 is only required to report to the department information specified in
4 subsections (1)(a), (b), (c), (g) and (i) of this section:

5 (a) All unwanted products collected by the product stewardship
6 program neither contained hazardous substances or hazardous materials
7 nor used hazardous substances or hazardous materials in the production
8 process;

9 (b) The product stewardship program attained a ninety percent
10 recovery rate of all unwanted products that were produced by producers
11 participating in the program and a reuse or recycling rate of eighty
12 percent of materials contained in such products; and

13 (c) All unwanted products collected by the product stewardship
14 program were carbon neutral in production and use.

15 (3) All reports submitted to the department must be made available
16 to the public on the department's website. Proprietary information
17 submitted to the department under this act is exempt from public
18 disclosure under RCW 42.56.270.

19
20 NEW SECTION. **Sec. 12.** ENFORCEMENT. (1) The department shall
21 provide, on its website, a list of all producers participating in
22 product stewardship programs it has approved and a list of all producers
23 it has identified as noncompliant with this act and any rules adopted to
24 implement this act.

25 (2) Wholesalers, retailers, and other persons shall check the
26 department's website to determine if producers of covered products they
27 are selling in or into the state are compliant with this act and any
28 rules adopted to implement this act. If a wholesaler, retailer, or
29 other person is unsure of the status of a producer or believes that a
30 producer is not compliant, they shall contact the department to
31 determine the producer's status.

32 (3) The department shall send a written warning and copies of this
33 act and any rules adopted to implement this act to a producer who is not
34 participating in a product stewardship program approved by the
35 department and whose covered product is being sold in or into the state.
36 The department shall also send a written warning and a copy of this act

1 and any rules adopted to implement this act to a wholesaler, retailer or
2 other person known to be selling the covered product in or into the
3 state.

4 (4) A producer not participating in a product stewardship program
5 approved by the department whose covered product continues to be sold in
6 or into the state sixty days after receiving a written warning from the
7 department, and a wholesaler, retailer, or other person who continues to
8 sell a covered product from a producer not participating in an approved
9 product stewardship program sixty days after receiving a written warning
10 from the department, will be assessed a ten thousand dollar penalty.
11 The department may waive or reduce the penalty if the producer,
12 wholesaler, retailer, or other person complies with this act and any
13 rules adopted to implement this act, or for any other reason the
14 department determines to be justified.

15 (5) The department shall send a written warning to a producer, group
16 of producers, or stewardship organization operating a product
17 stewardship program that fails to submit a product stewardship plan,
18 updated plan, proposed change to a plan, or annual report as required in
19 this act. The written warning must include compliance requirements and
20 notification that the requirements must be met within sixty days. If
21 compliance requirements are not met within sixty days, the producer,
22 group of producers, or stewardship organization will be assessed a ten
23 thousand dollar penalty. The department may waive or reduce the penalty
24 if the producer, group of producers, or stewardship organization
25 complies with this act and any rules adopted to implement this act, or
26 for any other reason the department determines to be justified.

27 (6) Each calendar day of a violation is a separate and distinct
28 offense.

29
30 NEW SECTION. **Sec. 13.** RECOVERY RATES AND EVALUATION. (1) By June
31 of the third program year for each product or product category, the
32 department shall establish required recovery rates for the fourth and
33 subsequent program operating years, and must establish a system of
34 penalties for producers and product stewardship programs that do not
35 attain the required recovery rates.

1 (2) By December 31, 2014, the department shall report to appropriate
2 committees of the legislature concerning status of the program
3 administered under this act and, if necessary, recommend legislation.

4 (3) The department, or its designee, may inspect, audit, or review
5 audits of processing and disposal facilities used to fulfill the
6 requirements of a product stewardship program.

7 (4) The department shall annually invite comments from local
8 governments, communities, and citizens to report their satisfaction with
9 services provided by product stewardship programs. This information
10 must be used by the department in reviewing proposed updates or changes
11 to product stewardship plans.
12

13 NEW SECTION. **Sec. 14.** ADMINISTRATIVE COSTS AND FEES. The
14 department may establish fees for administering this act. Fees may be
15 charged to the producers and must be paid annually by January 1 of each
16 year. Fees may be established in amounts to fully recover and not to
17 exceed expenses incurred by the department in administering this act.
18

19 NEW SECTION. **Sec. 15.** PRODUCT STEWARDSHIP PROGRAMS ACCOUNT. The
20 product stewardship programs account is created in the custody of the
21 state treasurer. All receipts from fees and penalties collected
22 pursuant to this act must be deposited in the account. Expenditures
23 from the account may be used only for administering this act. Only the
24 director of the department or the director's designee may authorize
25 expenditures from the account. The account is subject to the allotment
26 procedures under chapter 43.88 RCW, but an appropriation is not required
27 for expenditures.
28

29 NEW SECTION. **Sec. 16.** RULEMAKING AUTHORITY. (1) The department
30 shall adopt rules under the administrative procedure act, chapter 34.05
31 RCW, to implement this act, including, at a minimum:

- 32 (a) Program operating rules;
33 (b) A process for designating covered products and covered product
34 categories and for determining whether such products or product
35 categories are reusable or recyclable;

1 (c) A process for determining whether reduced reporting requirements
2 in section 11 of this act apply;

3 (d) A process for setting recovery rates for the fourth and
4 subsequent operating years of a program and for adjusting recovery
5 rates; and

6 (e) An enforcement process.

7 (2) The department shall designate covered products and covered
8 product categories under section 18 of this act by rule. The department
9 must provide notice to appropriate standing committees of the
10 legislature prior to designating a covered product or covered product
11 category.

12
13 (Note: Section 17 is for initial product categories that would be
14 expedited through the process by being initially named in
15 legislation. The products listed as examples are provided because
16 they: a. have significant GHG implications through their full life-
17 cycle or end-of-life management and inclusion would benefit GHG
18 reduction efforts; b. have existing programs that could be improved
19 and be more effective through inclusion, but would require little
20 effort by the State or the affected producers; and c. have been
21 engaged in extensive stakeholder processes and as a result it is
22 recognized that a legislated product stewardship approach is
23 necessary to attain an effective program and related benefits. It
24 would be up to the legislature which and if any of these products
25 would be named in Section 17 In addition, a number of the products
26 listed as examples contain mercury or other toxic materials, and have
27 significant implications for human health and water quality
28 (including Puget Sound) if not handled appropriately at end-of-life.)

29
30 NEW SECTION. **Sec. 17** INITIAL (PRIORITY?) COVERED PRODUCTS AND
31 COVERED PRODUCT CATEGORIES. (1) Covered product and product
32 categories designated under this act as initial priority products
33 include:

34 (a) Carpet and related padding.

35 (i) "carpet" means fabric or textile floor covering and padding
36 beneath the fabric and textile floor covering.

1 (ii) covered entities shall be all sources of post-consumer carpet
2 including residents, businesses, governments, charities and
3 institutions.

4 (iii) carpet and related padding that has been collected by product
5 stewardship programs shall be reused or recycled, unless otherwise
6 determined through agency rulemaking.

7 (iv) product stewardship programs for carpet and related padding
8 must be fully implemented by July 1, 2011.

9 (b) Mercury-containing lights.

10 (i) "Mercury-containing lights" means lamps, bulbs, tubes, or other
11 devices that contain mercury and provide functional illumination in
12 homes, offices, and outdoors.

13 (ii) covered entities shall be residents and small businesses.

14 (iii) mercury-containing lights that have been collected by product
15 stewardship programs shall be recycled unless otherwise determined
16 through agency rulemaking. Mercury and mercury bearing residuals from
17 recycling of general purpose lights must be retorted in properly
18 permitted facilities. Mercury recovered from retorting must be recycled
19 or placed in a properly permitted, monitored hazardous waste landfill,
20 storage or disposal repository to avoid reintroduction into the
21 marketplace. When available, mercury recovered from retorting must be
22 placed in a properly permitted, monitored permanent mercury repository
23 to avoid reintroduction into the marketplace and it shall not be
24 recycled.

25 (iv) product stewardship programs for mercury-containing lights must
26 be fully implemented by January 1, 2011.

27 (c) Out-of-service mercury-added thermostats

28 (i) "mercury-added thermostat" means a product or device that uses a
29 mercury switch to sense and control room temperature through
30 communication with heating, ventilating, or air-conditioning equipment.
31 A mercury-added thermostat includes thermostats used to sense and
32 control room temperature in residential, commercial, industrial, and
33 other buildings but does not include a thermostat used to sense and
34 control temperature as part of a manufacturing process. "Out-of-service
35 mercury-added thermostat" means a mercury-added thermostat that is

1 removed from a building or facility in this state and is intended to be
2 discarded.

3 (ii) covered entities shall be all sources of out-of-service mercury-
4 added thermostats including residents, businesses, governments,
5 charities and institutions.

6 (iii) out-of-service mercury-added thermostats that have been
7 collected by product stewardship programs shall be reused or recycled,
8 unless otherwise determined through agency rulemaking. Mercury and
9 mercury bearing residuals from recycling of mercury-added thermostats
10 must be retorted in properly permitted facilities. Mercury recovered
11 from retorting must be recycled or placed in a properly permitted,
12 monitored hazardous waste landfill, storage or disposal repository to
13 avoid reintroduction into the marketplace. When available, mercury
14 recovered from retorting must be placed in a properly permitted,
15 monitored permanent mercury repository to avoid reintroduction into the
16 marketplace and it shall not be recycled.

17 (iv) product stewardship programs for out-of-service mercury-added
18 thermostats must be fully implemented by January 1, 2011.

19 (d) Paint, including the plastic and metal containers containing the
20 paint that is collected.

21 (i) "paint" means interior and exterior architectural coatings
22 including: paints, enamels, clear finishes, sealers, undercoatings,
23 primers, tinting bases, and stains purchased for commercial and
24 homeowner use, but not including coatings purchased for industrial and
25 original equipment manufacturer use.

26 (ii) covered entities shall be residents, small governments, small
27 businesses, and charities.

28 (iii) paint, including the related plastic and metal containers,
29 that has been collected by product stewardship programs shall be reused
30 or recycled, unless otherwise determined through agency rulemaking.

31 (iv) product stewardship programs for Paint, including the plastic
32 and metal containers containing the paint, must be fully implemented by
33 January 1, 2011.

34 (e) Rechargeable batteries

35 (i) "rechargeable battery" means

1 (A) 1 or more nickel cadmium, nickel metal hydride, sealed lead
2 acid, lithium ion, lithium polymer or nickel zinc voltaic or
3 galvanic cells electrically connected to produce electric energy,
4 that weighs less than 1 kilogram, is easily removable and is
5 designed to be recharged for repeated uses; and

6 (B) includes any type of enclosed device or sealed container
7 weighing less than 1 kilogram consisting of 1 or more such cells,
8 including what is commonly called a battery pack ; but

9 (C) does not include -

10 (i) a battery used as the principal electric power source for a
11 vehicle such as, but not limited to, an automobile, boat,
12 truck, tractor, golf cart or wheelchair;

13 (ii) a lead-acid battery weighing more than two pounds;

14 (iii) a battery used for load leveling or for storage of
15 electricity generated by an alternative energy source, such as a
16 solar cell or wind-driven generator that weighs more than 1
17 kilogram consisting of 1 or more such cells; or

18 (iv) a battery used as a backup power source for memory or
19 program instruction storage, timekeeping, or any similar purpose
20 that requires uninterrupted electrical power in order to function
21 if the primary energy supply fails or fluctuates momentarily.

22 (ii) covered entities shall be all sources of rechargeable batteries
23 including residents, businesses, governments, charities and
24 institutions.

25 (iii) rechargeable batteries that have been collected by product
26 stewardship programs shall be reused or recycled. Mercury and mercury
27 bearing residuals from recycling of rechargeable batteries must be
28 retorted in properly permitted facilities. Mercury recovered from
29 retorting must be recycled or placed in a properly permitted, monitored
30 hazardous waste landfill, storage or disposal repository to avoid
31 reintroduction into the marketplace. When available, mercury recovered
32 from retorting must be placed in a properly permitted, monitored
33 permanent mercury repository to avoid reintroduction into the
34 marketplace and it shall not be recycled.

35 (iv) product stewardship programs for rechargeable batteries must be
36 fully implemented by January 1, 2011.

(2) The department may adopt rules to implement this section and to determine:

(a) Any unique management requirements, including, without limitation, special collection, processing and final disposition requirements for an unwanted product containing hazardous substances or hazardous materials;

(b) Labeling requirements for producers, if any, such as brand, toxicity, or carbon footprint.

(c) Any other issues the Department deems necessary for implementing this section.

NEW SECTION. **Sec. 18** DESIGNATION BY DEPARTMENT. (1) At least every two years, commencing on the effective date of this act, the department will consider and evaluate products and product categories to designate as covered products or covered product categories under this act.

(2) The public, including producers, may petition the department to consider products and product categories to designate as covered products or covered product categories under this act. The department shall establish a procedure for review of these petitions during the process specified in subsection (3) of this section.

(3) In designating covered products or covered product categories, the department will consider:

(a) Environmental and health impacts, including:

(i) climate change impacts and benefits;

(ii) potential energy conservation;

(iii) public and environmental health and safety;

(iv) potential resource recovery and material conservation;

(v) product toxicity;

(vi) opportunities for reducing waste and toxicity;

(vii) opportunities for increasing reuse or recycling, recycled-content, and design for reuse or recycling;

(viii) a product's potential to act as a contaminant in recycling programs;

(ix) concerns about disposing of a product in the waste stream;

(x) success in addressing similar products and product categories in other product stewardship programs in the United States and internationally.

(b) Public and business benefits and interest, including:

(i) management costs to local governments, taxpayers, and solid waste ratepayers in the absence of product stewardship programs;

(ii) difficulty managing in traditional curbside collection and other standard government solid waste management systems;

(iii) opportunities for existing and new businesses and infrastructure to manage products or product categories proposed for designation and to use or increase markets for materials recovered from such products or product categories with a preference for in-state opportunities;

(iv) public demand;

(v) recommendations of the product stewardship advisory committee established in section 19 of this act.

(4) Through the designation process the department will determine:

(a) Covered entities for a product or product category;

(b) Implementation dates;

(c) Whether a product or product category is reusable or recyclable;

(d) Any unique management requirements, including, without limitation, special collection, processing and final disposition requirements for an unwanted product containing hazardous substances or hazardous materials;

(e) Labeling requirements for producers, if any, such as brand, toxicity, or carbon footprint; and

(f) Whether a covered product or covered product category's packaging should also be designated as a covered product.

NEW SECTION. Sec. 19 PRODUCT STEWARDSHIP ADVISORY COMMITTEE. (1)

The department will appoint a product stewardship advisory committee consisting of up to fifteen members that will include representatives of local governments, consumer advocacy groups, environmental groups, businesses, and four legislative members, one from each major caucus of the house and senate. House members shall be designated by the speaker

1 of the house and senate members shall be designated by the president of
2 the senate.

3 (2) The department will consult the advisory committee regarding
4 designation of new covered products and covered product categories,
5 covered entities, implementation dates, reusability or recyclability of
6 the product, management requirements, , labeling requirements, and other
7 matters requested by the department.

8 (3) The advisory committee shall review and provide comments on the
9 department's recommendations regarding designation of new covered
10 products and covered product categories.
11

12 NEW SECTION. **Sec. 20** NO LIMITATION ON AUTHORITY. Nothing in this
13 act changes or limits the authority of the Washington utilities and
14 transportation commission to regulate collection of solid waste,
15 including curbside collection of residential recyclable materials, nor
16 does this act change or limit the authority of a city or town to provide
17 such service itself or by contract under RCW 81.77.020.
18

19 NEW SECTION. **Sec. 21** ANTICOMPETITIVE CONDUCT. A producer, group
20 of producers or stewardship organization and its officers, members,
21 employees, and agents that organize a product stewardship program
22 required under this act are authorized to engage in anticompetitive
23 conduct to the extent necessary to plan and implement a program, and are
24 immune from liability under state laws regarding antitrust, restraint of
25 trade, unfair trade practices, and other regulation of trade and
26 commerce.
27

28 NEW SECTION. **Sec. 22** LIBERAL CONSTRUCTION. This chapter must be
29 liberally construed to carry out its purposes and objectives.
30

31 NEW SECTION. **Sec. 23** As used in this act, captions constitute no
32 part of the law.
33

34 NEW SECTION. **Sec. 24** Sections 1 through 22 of this act constitute
35 a new chapter in Title 70 RCW.
36

1 NEW SECTION. **Sec. 25** If any provision of this act or its
2 application to any person or circumstance is held invalid, the remainder
3 of the act or the application of the provision to other persons or
4 circumstances is not affected.

5
6 NEW SECTION. **Sec. 26** This act is necessary for the immediate
7 preservation of the public peace, health, or safety, or support of the
8 state government and its existing institutions, and takes effect July 1,
9 2009.